

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

FILED

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Webb Hunter Huss, III
f/d/b/a General Travel
Elizabeth Huss
165 Ivy Street
Spartanburg, SC 29302
SSN 535-46-9987
SSN 244-17-2493

Debtor(s).

Case No. 96-74510-B

Chapter: 7

ENTERED

JAN 22 1997

K.R.D.

Judgment on Order dated January 21, 1997:

It is ORDERED, ADJUDGED AND DECREED

1. that the judicial liens of Thomas Bridgeman and Gateway Tours and Cruise impair the exemption to which the debtors would otherwise be entitled under 11 U.S.C. § 522(b) and Chapter 41 of Title 15, Code of Laws of South Carolina, 1976 (as amended);

2. that the judicial liens held by Thomas Bridgeman and Gateway Tours and Cruises, Inc. be, and hereby are, avoided pursuant to 11 U.S.C. §522(f) (1) (A) in their entirety;

3. that the judicial liens set forth above which are avoided in full may be canceled of record at any time after thirty (30) days after a discharge in this case is granted; and

4. that debtors Motion for Attorney's Fees and Cost is denied.

AND IT IS SO ORDERED.

January 21, 1997
Columbia, South Carolina

Thurmond Bailey
Judge, US Bankruptcy Court

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U.S. DISTRICT COURT
DIST. OF SOUTH CAROLINA

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ORDER

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K.R.D.

This matter comes before the court upon the debtors' Motion to Avoid Judicial Liens and debtors' Motion for Attorney's Fees and Cost. The Palmetto Bank did not respond to the Motion to Avoid Judicial Liens and a default order was entered as to that creditor on October 10, 1996. Thomas Bridgeman and Gateway Tours and Cruises, Inc. objected to debtors' motions and the matters were set for hearing. Present at the hearing were the debtors, represented by Sheila R. Young of the Law Office of John Kirkland Fort, Charles P. Edwards representing Thomas Bridgeman (hereinafter "Bridgeman") and Robert C. Wilson, Jr. representing Gateway Tours and Cruises, Inc. (hereinafter "Gateway"). For the reasons set forth below, the court finds that the debtors' motions should be granted.

Debtors' Motion to Avoid Judicial Lien is based upon 11 U.S.C. §522(f)(1)(A) which allows a debtor to avoid the fixing of a judicial lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would be entitled. Section 522(f)(2)(A) sets forth the formula by

which the court is to determine whether a lien impairs an exemption to which the debtor would be entitled. If the sum of the debtor's exemption, all other liens on the property and the judicial lien exceed the value of the debtor's interest in the property, the judicial lien is considered to impair the exemption to which the debtor would be entitled.

The only evidence of the value of debtors' residence is contained in Schedule A filed with the Bankruptcy Petition. Schedule A indicates that the debtors' home is worth \$235,000. Schedule A and D filed with the Bankruptcy Petition indicate that there are three mortgages on the residence. The first mortgage is to NationsBank in the amount of \$147,309.62. The second mortgage is to First Union National Bank in the amount of \$40,038.06. Neither Bridgeman nor Gateway contest the value of debtors' home or challenge the validity of these mortgages.

Schedule A and D also indicate a third mortgage to W. H. Huss, Jr., debtor's father, in the amount of \$105,000. Although presented with a copy of the mortgage recorded on April 14, 1995, both Bridgeman and Gateway challenge the validity of the third mortgage, contending that note and mortgage from debtor to his father was not supported by valid consideration. The creditors concede that an advancement of funds from debtor's father to debtor's now dissolved corporation was made, that an advancement of funds from debtor's mother to debtor's now dissolved corporation was made and that debtor's father's stock was liquidated by the

second mortgage holder thereby reducing the principle balance of the second mortgage.

Neither in their briefs nor in oral argument do the creditors challenge the validity of the advancement of funds from debtor's mother to debtor's now dissolved corporation. In his deposition, debtor's father testified that the advancement of funds from debtor's mother was part of the consideration for the note and mortgage. Webb Hunter Huss, Jr.'s deposition page 41 lines 17 to 19. Debtor testified that the remaining principle balance on this advancement of funds is \$24,000. Webb Hunter Huss, III's deposition page 41 lines 4 to 7. Since this advancement of funds is uncontested, the court finds the advancement to be valid consideration to support the third mortgage on debtors' residence.

Because the funds advanced by debtor's father were for the benefit of debtor's now dissolved corporation, Bridgeman and Gateway argue that debtor could not give a valid mortgage to secure the repayment of those funds. This court is not aware of any legal prohibition to the securing of business loans by personal residences. Since the court finds valid consideration in the liquidation of the debtor's father's stock and in the advancement from debtor's mother, it need not address whether the advancement of funds from debtor's father was for the purchase of stock in the debtor's corporation.

Bridgeman and Gateway contend that the pledge of debtor's father's stock was a gift or advance on debtor's inheritance. In

support of their position, the creditors rely on one line in debtor's father's deposition, "It was my intention to let him inherit it." Webb Hunter Huss, Jr.'s Deposition page 40 line 5. However, in clarifying that remark, debtor's father stated that it was his understanding that when the original First Union note was paid he would get his stock back. Webb Hunter Huss, Jr.'s Deposition page 40 lines 10 to 15. He further stated that the liquidation of the stock was part of the consideration for the note and mortgage on debtors' residence. Webb Hunter Huss, Jr.'s Deposition page 41 lines 10 to 19. Moreover, debtor states that when the stock was liquidated by First Union and the dividends stopped going to his father, his father required debtors to remedy the situation. Webb Hunter Huss, III's Deposition page 11 lines 2 to 22. Since the stock did not belong to them and since his father lost the earning potential from the dividends, debtors granted his father a mortgage on their residence.

While debtor's father may have intended for debtor ultimately to inherit the stock, until his demise he could have changed his mind. The deposition testimony as a whole as well as the debtors' and his father's actions in formalizing and memorializing their transactions prior to the commencement of the actions which led to the Bridgeman and Gateway judgments persuades the court that debtor's father's stock was not intended as a gift or advancement to debtor of his inheritance.

It is uncontroverted that debtor's father pledged 1369 shares of Roadway Services, Inc. stock as collateral for a loan from First Union. This stock was the distribution of debtor's father's profit sharing plan. The stock was ultimately liquidated by First Union National Bank and \$68,880.14 was applied to the principle balance of the second mortgage on debtors' residence. Debtors received the direct benefit or value of the liquidation of the stock in that the equity of their home increased and their personal liability to First Union National Bank decreased. Accordingly, the court finds that receiving the benefit from the liquidation of stock that did not belong to them is valid consideration to support the note and mortgage to Webb Hunter Huss, Jr.

Based upon the forgoing and using the formula set forth in §522(f)(2)(A), the sum of the debtors' exemption (\$5,000), the three mortgages (\$147,309.62, \$40,038.06 and \$92,880.14 respectively) and either of the judgment liens (\$4,750 or \$9,804.22) exceeds the value of the debtors' interest in their residence (\$235,000). Accordingly, the debtors' motion should be granted and the liens avoided.

Additionally, debtors have requested costs and attorney fees for the prosecution of their Motion to Avoid Judicial Liens. Bridgeman and Gateway contend that debtors' Motion to Avoid Judicial Liens necessitated a response from them and that since their objections were filed in good faith, no cost or attorney fees should be awarded to debtors. This court normally does not award